

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 1:19-00307

JAMES WALKER, et al.

MEMORANDUM OPINION AND ORDER

Trial of this action is currently scheduled for May 27 2020. However, on March 13, 2020, the President of the United States declared a national emergency under the National Emergencies Act, 50 U.S.C. § 1601 et seq., in light of the COVID-19 pandemic. The impact of the pandemic is well-documented and, in order to lessen the spread of the disease, a number of measures have been instituted in this court, including the delay of criminal matters. See General Order and General Order # 3 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. March 13, 2020 and March 23, 2020) (Johnston, C.J.). On April 14, 2020, the earlier delay of in-person criminal proceedings was extended through May 31, 2020. See General Order # 5 entered in In Re: Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, No. 2:20-mc-00052 (S.D.W. Va. April 14, 2020) (Johnston, C.J.) (ordering all civil and criminal petit jury selections and trials scheduled to commence from the date of the order through May 31, 2020 continued until further order of the

court and that the time period of continuances implemented by the order be excluded under the Speedy Trial Act).

In ordering the continuance of defendants' trial, the court finds that, due to the current danger to the public health caused by COVID-19, the ends of justice served by ordering the continuance outweigh the best interest of the defendants and the public in a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A). In so finding, the court considered the factors outlined in 18 U.S.C. § 3161(h)(7)(B) and finds that a failure to order this continuance "would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice." Id. § 3161(h)(7)(B)(i).

Accordingly, the court hereby **ORDERS** as follows:

1. Trial of this action is continued until June 9, 2020, at 9:30 a.m., in Bluefield. Jury instructions and proposed voir dire are to be filed by June 2, 2020.
2. Pursuant to 18 U.S.C. § 3161(h)(7)(A), the time from this Order until the trial is excludable for purposes of the Speedy Trial Act.¹

¹ The court notes that, for purposes of determining compliance with the Speedy Trial Act, "in cases involving multiple defendants only one speedy trial clock, beginning on the date of the commencement of the speedy trial clock of the most recently added defendant, need be calculated under 18 U.S.C. § 3161(h)(7)." United States v. Piteo, 726 F.2d 50, 52 (2d Cir. 1983); see also United States v. Walker, Nos. 95-5914, 96-4247, 96-4110, 1997 WL 358770, *3 (4th Cir. June 30, 1997) (quoting Piteo).

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record, to the United States Marshal for the Southern District of West Virginia, and to the Probation Office of this court.

IT IS SO ORDERED this 20th day of May, 2020.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge